UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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IN RE: METHYL TERTIARY BUTYL ETHER ("MTBE") PRODUCTS LIABILITY LITIGATION	00 MDL 1358 00-cv-01898 (SAS) 04-cv-04968 (SAS) 07-cv-10470 (SAS) 14-cv-06228 (SAS)

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April 24, 2015
2:30 p.m.

Before:

HON. SHIRA A. SCHEINDLIN,

District Judge

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(In open court)

THE COURT: Good afternoon, Ms. Greenwald.

MS. GREENWALD: Good afternoon.

THE COURT: Mr. Axline.

MR. AXLINE: Good afternoon, your Honor.

THE COURT: Mr. Miller.

MR. MILLER: Good afternoon.

THE COURT: Mr. Gilmour.

MR. GILMOUR: Good afternoon, your Honor.

THE COURT: Mr. Jackson.

MR. JACKSON: Good afternoon, your Honor.

THE COURT: And Mr. Pardo.

MR. PARDO: Good afternoon, your Honor.

THE COURT: Mr. Bongiorno.

MR. BONGIORNO: Good afternoon, your Honor.

THE COURT: Mr. Riccardulli.

MR. RICCARDULLI: Good afternoon, your Honor.

THE COURT: Ms. Meyer.

MS. MEYER: Good afternoon, your Honor.

THE COURT: Mr. Tuite, Tuite. Mr. Schulte.

MR. SCHULTE: Good afternoon, your Honor.

THE COURT: Mr. Couret.

MR. COURET FUENTES: Good afternoon, your Honor.

THE COURT: Mr. Temkin.

MR. TEMKIN: Good afternoon, your Honor.

THE COURT: Mr. Parker.

MR. PARKER: Good afternoon, your Honor.

THE COURT: Mr. Correll.

MR. CORRELL: Good afternoon, your Honor.

THE COURT: Ms. Weirick.

MS. WEIRICK: Weirick. Good afternoon, your Honor.

THE COURT: Weirick. And Mr. Condron.

MR. CONDRON: Good afternoon, your Honor.

THE COURT: All right. And good afternoon to everybody else. And the people on the cellphone -- no, they're not on the line.

Hello, folks on the phone? Can you hear me?

VOICES: yes, your Honor.

THE COURT: OK. And I understand that you know that you're just going to be listening in. But it's too complicated, I think, to actually participate, but you'll be hopefully able to hear, at least, what I say. You may not be able to hear every lawyer, but I will ask them to speak up.

A VOICE: Thank you, your Honor. We understand.

THE COURT: So, with that, we have an agenda submitted on April 16, jointly. We have plaintiff's preconference letter and exhibit from April 16, defendants' preconference letter and exhibit, April 16, and then a reply letter from both sides dated April 21.

The agenda begins with Orange County, then turns to

Pennsylvania, and ends with Puerto Rico. So those are the three geographic areas we're going to focus on, three cases.

And starting with Orange County, it sounds like the parties agree that it's time to remand the focus plume sites to the Central District of California for trial. So that's not an issue. But there is an issue that plaintiffs have raised with respect to the judgment as to BP and Shell. The plaintiffs feel that the Court should revise its earlier order to state that the order barred only Orange County continuing-nuisance causes of action that are based on harm that was incurred before the BP and Shell consent judgments were entered, but obviously not after. Alternatively, if the Court is not inclined to revise its own order, then Orange County asked for a final judgment be entered pursuant to 54(b), citing a recent Supreme Court case and asking that appellate review be permitted that so that if in fact there are continuing nuisance claims against BP and Shell they could proceed to trial maybe, with whatever the trial schedule to come is in the Central District of California.

The defendants oppose both requests and say, surely you shouldn't let them move to reconsider your own decision. It was a long time ago. There was a cutoff to do that. Motions for reconsideration were due at the deadline, and that's long been missed, and this is really just a motion for reconsideration and the argument that somehow it might allow

these two defendants to join the trial is not a good argument because it would probably take too long for appellate review for that to happen. Also, the defendants say that 54(b) doesn't make sense either because it would result in piecemeal appeals and there would be no particular efficiency, again for the reason that it's not going to affect this trial.

I am willing to hear from you, but I read the submissions and I sort of get the point. My sense is that a motion for reconsideration or whatever you want to call it would not make sense at the district court level. I think I did clearly address the issue already, even the issue you stated was now ready, but I think a 54(b) does make some kind of sense. I can't predict the future. I wish it were the case that when you remand, the trial is scheduled for a week later. But it often takes a year till everybody is actually in the courtroom ready for trial, and it's possible, if an appeal were filed promptly and if you explained the urgency and the decision that you're willing to have it expedited, maybe the Second Circuit could get it done in time for these defendants to join any trial in California if everything fell right. So who knows. So I don't think it's a bad idea. And I'm not terribly worried about piecemeal appeals. This is a very discrete issue, unrelated to the many issues that will go on. And it could take years for a final judgment because this is only the focus case. If I really thought that one trial was

going to wrap things up and then the appeal could go forward, that's one thing, but it isn't. This is only the remand of focus sites. This case goes on.

So I'm not opposed to a 54(b). So since one side lost one issue and one side won one issue, would anybody feel a terrible need to be heard further?

MR. CONDRON: Your Honor, I would like to be heard on the 54(b) issue.

THE COURT: Mr. Condron.

MR. CONDRON: I understand what you're saying. The issue that I think needs to be addressed here is the notion that the Second Circuit is likely to address this prior to the trial. It's unlikely.

THE COURT: I got that.

MR. CONDRON: In addition, in terms of piecemeal appeal, we're also going to be left with a situation now where, when there is a final judgment in this case, it will likely be heard by the Ninth Circuit.

THE COURT: I realize that too.

MR. CONDRON: So we're essentially setting up a circuit split.

THE COURT: But this is a very discrete issue. This isn't the appeal of the merits and the many decisions and the many issues that might actually occur at trial, if there is not a settlement, which is even more likely. But I think this is

discrete. It has to do with an old settlement and what that old settlement covered or couldn't cover. It's not going to be a dispute for the Ninth Circuit on the merits on the rest of the case. So I don't think we're setting up a circuit split at all. It's a nice argument, but I don't think it works.

MR. CONDRON: The other issue we have, your Honor, is that some of your earlier rulings in the case are wrapped up in what has happened in connection with the issues on our summary judgment motion.

THE COURT: On this particular aspect? What the settlement, the old settlement of BP and Shell -- what year was that settlement?

MR. CONDRON: Ours was 2005 and BP was 2002.

THE COURT: Yes. I don't think anything I've been doing -- it really is a matter of interpreting the breadth of that settlement, and if I'm right that's good, if I'm wrong that's OK too. But we might as well get the appellate court to rule on it. If they don't get it done in time, well then, no harm done from the Court's perspective. The lawyers have spent time briefing, but that's your business. I just don't see the harm in trying to get it done.

MR. CONDRON: The only other point I'd make, your Honor, is that there are some underlying decisions in the OCWD case that inform the issues you've decided in our case, such as, what are OCWD's rights, in terms of property rights and

water, what the nuisance might be or might not be, etc. And those are other decisions that you've issued in the case that could or could not, depending on how the Second Circuit might proceed, be wrapped up in the ruling that they issue on anything dealing with our summary judgment.

THE COURT: I think I need a response from one of the plaintiff's lawyers on that, because I'm not sure those issues would have to be decided in determining the scope of the previous settlement release. But go ahead, Mr. Axline.

MR. AXLINE: Yes. I do think that the question on appeal is solely going to go to what's the scope in this specific language that are in these two specific settlement agreements.

THE COURT: I think so too. Is that the way you briefed the appeal?

MR. AXLINE: Yes.

THE COURT: Is that the plan?

MR. AXLINE: Yes.

THE COURT: They say, the narrow issue we're asking you to decide is whether Judge Scheindlin was basically right or wrong in interpreting the scope of these agreements.

MR. AXLINE: Yes. And the issues that we briefed to you, in that res judicata motion, would be the issues that we would brief on appeal.

THE COURT: Right. But do they address all the issues

Mr. Condron is worried they're going to address, which are beyond the scope of those settlements and releases then and raise issues that are common throughout the case and that therefore raises the risk of a circuit split: the Second Circuit does one thing about the underlying issues, the Ninth Circuit does another, we create chaos? Or do you really think it's a matter of interpreting a settlement in the case?

MR. AXLINE: I think it's just a matter of interpreting the settlement. Now, it does require as a predicate some understanding of the Orange County Water District and the Orange County District Attorney's Office, but those were not really controversial matters in any of your prior opinions. The liability issues are not implicated by the scope of the release language, other than, as we said, in our 72-hour letter, the nature of the continuing nuisance claim.

MR. CONDRON: Your Honor, I think that in and of itself was an issue, because first of all they never even briefed the issue of continuing nuisance in connection with our motion, so if they're planning on raising that in the Second Circuit, that absolutely is going to implicate other defendants as well.

THE COURT: Well, I would think if they try to raise that -- first of all, don't you have a preconference letter with the Second Circuit?

MR. CONDRON: Yes, your Honor.

THE COURT: Well, tell the person who's conferencing it that it's outside the record of the district court case and therefore the certification can't possibly apply to an issue that was never before the district court, and get that person to say they can't brief that. If you're right that it was not raised, Mr. Axline, you can't raise an issue on appeal that was not before the District Court. You know that.

MR. AXLINE: Correct, your Honor. However, the issue, in our 72-hour letter, is, was this before the Court. The issue that was briefed to you was whether the releases precluded any of the district's claims, not whether it precluded all of the claims. And as we were looking at remand and evaluating what was going to go back to California, we realized that the harm, for continuing usage, is under California law considered to create a new claim every day that the nuisance continues.

THE COURT: You just realized that? I mean, you didn't realize that since my opinion came out, was it September?

MR. CONDRON: September.

THE COURT: September, yes.

MR. AXLINE: It came out in September. There were other pending summary judgment motions at the time.

MR. CONDRON: Which were decided in December, your Honor.

MR. AXLINE: Which were decided in December. And then we went through the process of deciding remand, however we were going to push for it, meeting and conferring with the defendants about that. So we didn't really get to the number of what was going to be remanded. And frankly maybe we could have looked at this a little more closely earlier. But this is what triggered our attention to the question of, well, what claims does the district have remaining, potential claims.

So the district could have filed a new lawsuit based upon continuing everyday harm. That's what you do with continuing nuisance. Oddly enough we could not file a claim for damages that occurred, say, last week, based on the same continuing nuisance claim that we filed our complaint on in 2003.

The defendants waited ten years, ten years, before they brought their res judicata motion. We had to go through extensive discovery with respect to all the stations that are now subject to their res judicata opinion, your res judicata opinion, because of the defendants' delay. We are now asking you to give us the opportunity to brief --

THE COURT: Well, do you have a new harm that happened last week?

MR. AXLINE: Yes. Well, yes. Under California law, and frankly under your prior opinions on the nature of continuing nuisance in California, a new harm is created every

day. And we could not have sought, we could not have brought an action for damages based upon that same plume. Let's say a plume of contamination started in 2003 and it's spreading, as is happening in the Orange County Water District case. We could not have brought a cause of action for damages for the incremental harm that was caused by that plume subsequent to the day the damages were awarded for an initial continuing nuisance claim, because you have to bring successive claims for continuing uses.

Now, the way it works in reality, of course, is that somebody brings a continuing nuisance claim, and typically, you know, there is either a settlement or determination of liability, and then it all gets resolved.

THE COURT: Yes. And I think the argument is that's exactly what happened. You brought a continuing nuisance claim, and it's been settled going forward. You obviously anticipated the plume wouldn't stop on the day of the settlement.

MR. AXLINE: But the question we're asking you to address under 54(b), which does give you the power to revise your orders at any time prior to final judgment, is to take a look at the scope of the release --

THE COURT: Yes, I think I did. I have done that already. You may disagree with the outcome. But it's not like I didn't look at it.

MR. AXLINE: There was an ambiguity. In our view, the outcome doesn't preclude these new claims that arose after that release, because the release did not say anything about future claims.

THE COURT: Well, maybe that's an argument you make to the district court at trial, in California.

MR. AXLINE: We thought we should bring it to you first, your Honor. We'll be happy to make it to the trial court in California.

THE COURT: I mean, that's sort of a third alternative. You brought it to me and I rejected the idea that I should do a do-over of the district court. Then you said, well let's do a 54(b), but maybe it's not really a 54(b) because your adversary says you'd be raising a new matter before the circuit that you didn't present to the district court. And maybe it's a trial court issue where you said to the trial court, well, look, this is Judge Scheindlin's opinion but we see an ambiguity, it's really for you to decide, Judge So-and-So. So maybe these claims can go forward under California law, even given your opinion, because they're a new claim for a new event and you couldn't have brought a damages claim then. If it's the same arguments you just made, maybe that's made to the trial judge and you win or lose. And then if you lose, you maybe can get a quick hearing in the Ninth.

MR. AXLINE: We did consider that option, your Honor.

We thought we should present it to you first.

THE COURT: Well, yes. I rejected that idea. I was leaning toward accepting the 54(b), but I further thought, if you're going to go outside the record, the circuit won't be happy, your adversary is going to point that out, and I think you're asking the circuit to hear something that the district court has never heard, that would be kind of maybe competing. Maybe your only option is to tell the trial court that picks up the case upon remand for trial what you think should be in and what should be out, and litigate it there. That is not redoing my thing. It's trying to say, OK, we have this opinion but that doesn't solve the issue now what claims against these defendants are still viable.

MR. AXLINE: One of the reasons we -- well, we thought we should bring it to you first, just as a matter of comity --

THE COURT: I appreciate it. You gave me a chance to correct myself if I was wrong. Apparently I'm declining the option to say that. But I understand why you want to go forward. You have two locations to go. You can go to the Second Circuit or you can go to the trial court there, which would lead to an appeal to the Ninth Circuit, and maybe that makes sense. You can get it probably before the trial court.

MR. AXLINE: I understand what you're saying, your Honor. What I can see coming from the trial judge, though, is, why are you asking me to determine the scope of Judge

Scheindlin's opinion, shouldn't you be asking --

THE COURT: No, because you're saying that wasn't before her, going forward, new harms that arise because of the continuing nuisance that could come well after even her opinion. It happens every day, with all new claims. And it's California law and it's here for trial. Maybe they could say, hey, you're a better lawyer than I am, you'll tell them why they should hear it. So maybe that's the route.

But I will stick with giving you permission on the 54(b), but maybe after this conference you think about it and say, I'm really better off with the other suggestion of going to the trial judge, win or lose, and then appealing quickly to the Ninth Circuit. And they may want to move quickly so that the trial is efficient. They may have more of an incentive than the Ninth Circuit.

So you'll think about it. You don't have to file any brief today.

MR. AXLINE: That's very kind of you. I see the choice. We'll try to make that choice rapidly and inform you.

THE COURT: Yes. That's fine.

MR. CONDRON: Your Honor, if I could be heard on your last suggestion, please.

THE COURT: I don't know why you should be heard on my last suggestion, because my last suggestion wouldn't be in my court. So you can be heard in opposition if they file a motion

before the trial judge in California.

MR. CONDRON: But the problem with that suggestion is, we've been dismissed here and we are out. The motion was for summary judgment on all claims that the district could assert against us, and that motion was granted. So we're not in the case anymore.

THE COURT: Well, they'll tell that judge that you should be brought in for trial because -- and they try to explain it. And maybe that's why they'll opt not to take that direction. So I don't know which they'll do. I'm sure they can find a procedural way to get it done if they want to try it there. If not they'll go here. But I'm not going to prevent them from bringing it.

MR. CONDRON: Thank you, your Honor.

THE COURT: But he did tell you to decide quickly, Mr. Axline, because once you submit the papers on the remand, you'll want to propose a schedule for this if you want to try a 54(b) here. I think you're going to have difficulty with it if it's outside the record of the district court. I still suggest that you're going to have a problem in the Second Circuit.

Yes, Mr. Parker.

MR. PARKER: Thank you, your Honor. With respect to the mechanism of the remand, I just wanted to alert your Honor that we are working on a remand order and we're going to meet and confer with Mr. Axline to get that and submit it to the

Court. If there are any issues with it, we'll raise it at the next conference.

THE COURT: All right. But we've managed to do this in New Jersey.

MR. PARKER: Yes.

THE COURT: It took some work, it took some thinking, but we got it done.

MR. PARKER: I'm very hopeful that will happen here.

THE COURT: And the MDL panel went along with it. So there's a corrective in this MDL for splitting the case between the portion that can be remanded and the portion that remains -- which of course raises another issue in the OCWD case, and that is, what is the mechanism for continuing to move the remainder of the case along, here in the district court?

MR. AXLINE: We're meeting and conferring on that topic also, your Honor. And I think we'll have either a suggestion or a reply and dispute to present to you at the next conference.

THE COURT: But that's not ready for today.

MR. AXLINE: No.

THE COURT: OK. Well, that takes us to the Pennsylvania matter. And this is a real problem because it has to do with identifying the site at issue. And defendants say plaintiffs have an obligation to do it and plaintiff should do it, plaintiff should do it very promptly and certain other

discovery shouldn't proceed until plaintiff has done it. And plaintiffs say, well, it may be our burden, but it's always required us to obtain information from defendants before we are able to identify all of the sites. So I have sort of sympathy for both sides on this. I realize it's plaintiff's obligation but plaintiff can't do it until they get the cooperation of defendants in providing the material they need to identify all those sites.

So the date proposed by the defendants is unrealistic, by the end of August. I don't think the plaintiff can do the list of all sites and wells at which MTBE has been detected, and sampling. It's beyond what they could possibly achieve in that amount of time.

(Pause)

THE COURT: I think somebody hung up on us. Some of you are still on the phone, though, I assume.

So in any event, I think there has to be a date, but there has to be a schedule within the time frame as to what plaintiff will need in order to get to that goal. So I think the right date is no later than the end of 2015. So the identification of sites and sampling results and everything for all the sites in issue needs to be December 31st, 2015. But within the months remaining, May through whatever, November, to be ready to put it all together in December is to identify what is still needed from defendants to make this viable.

While I'm busy talking about that, I will say that there are specific disputes about some of the sections in the plaintiff's proposed CMO in the case and defendant's proposed CMO in the case, and it's a little hard to go through that without discussing the specifics a little more, but I will go through the last group, plaintiff's proposed section 5 of the CMO. Defendants object to plaintiff's proposals of open discovery on general liability issues before plaintiff has identified the sites at which MTBE has been detected. I don't agree with the defendants on that one at all. General liability and site-specific liability don't relate to each other. And I don't see why the general liability issues have to await the identification of every site. That's not what general liability means. General liability is what you know, when did you know it, who shipped in, who shipped out. You know, we've all been together for a decade. So we know what we're talking about. There's no reason to hold up general liability discovery. So I think plaintiff's proposed section 5 is OK.

But the other section, which I am happy to discuss with you one by one, I'm prepared to do it. For example, plaintiff's proposed section 3C, defendants object to plaintiff's request to sign a consent form instructing their environmental consultant to produce certain readily accessible data because defendants have already agreed to produce readily

accessible electronic data regarding MTBE remediation sites, including that which is in the possession of their current consultant. So I don't know that there is really a dispute left on that one. Mr. Axline, you can tell me if you -- or is it you again for Pennsylvania?

MR. AXLINE: I think Mr. Miller is doing this.

THE COURT: I'm not sure that you dispute that, Mr. Miller, on section 3C, because apparently defendants are agreeing to produce data regarding remediation sites, including what the consultants have, so until you see what you get, this may not be ripe on that particular one.

MR. MILLER: They're saying they're preparing to do so only for their current consultants. And we anticipate, even after serving subpoenas on the consultants, that they're going to say, we cannot turn the data over because we do not have permission from our clients. And we want to get that cooperation. And it's part of our effort to get what we need on the defendants' sites.

THE COURT: Yes. But I'm not following what the objection is going to be. They say that they're going to turn over what's in the possession of their current consultant. Are you saying that there is no former consultant?

MR. MILLER: They have many sites where their consultants have done work in the past but they are not currently consulting for the defendant with respect to that

site.

THE COURT: So that's why you used the term "environmental consultants" and they used the term "current consultant." Is that all the fight is about, current versus past?

MR. MILLER: As I understand it, yes.

THE COURT: Mr. Bongiorno?

MR. BONGIORNO: Thank you, your Honor. Tony Bongiorno for the defendants. I'm not sure there is a fight. I think you just laid it out. If he wants to serve a subpoena on our prior consultants, God speed him.

THE COURT: OK. Well then --

MR. BONGIORNO: I just didn't, I'll be frank, your Honor, I did not understand the regimen. I'm not trying to be flip. But we have to give a permission to serve a subpoena. I didn't get that.

THE COURT: Well, I guess he wants the client to consent to allowing its consultants to produce the information. Sometimes information is confidential; without client consent the response to the subpoena is, we would if we could but we have to have permission from our client. All he's saying is, if you or the other defendants are clients, you should inform all the consultants that you've used at the various sites that they have your permission to respond to the subpoena and not withhold it on the ground that we need our client's permission.

MR. BONGIORNO: Yes. I do not think we would want to come back in this courtroom having told our consultants, don't comply with the subpoena.

THE COURT: It's not that they're telling them, don't comply. It's that they're going to say, we can't comply unless our client gives us permission. So if you're saying on this record, which could then be sent along with the subpoena, dear consultant, you have our permission to release the information sought by plaintiffs in this litigation, and they can attach that page of the transcript to every subpoena, then you've consented.

MR. BONGIORNO: Certainly, on behalf of Exxon Mobile, we have no objection to that, your Honor.

THE COURT: That's on the record. So if you have that attached to your subpoenas, is it still a problem, Mr. Miller?

MR. MILLER: No. That's very helpful.

THE COURT: All right. I have other defendants in the room. Are there other people who will stand up and say, on behalf of so-and-so, we consent to allowing our consultants to produce the information? Anybody else want to stand? Mr. Condron?

MR. CONDRON: Of course, your Honor. On behalf of Shell, I will allow our consultants to produce information that is being sought by the plaintiff.

THE COURT: Anybody else?

That's only two defendants. Who else? What other defendants are here, by name?

MR. CORRELL: Your Honor, Charles Correll for Chevron. We have a problem with doing that just because we don't know the content: were these consultants assisting in prior litigation or something like that. What I would like is if the objection gets raised, we address it at that point.

THE COURT: Well, no. I would say much more efficiently, what if you were sent a courtesy copy of the subpoena, next week or the day it's ready, and say, now that you've seen it, can you add your consent to the other two? I don't want to go through the slowdown of having the objections of the consultant. Take a look at the subpoena. Go over it with your client. If there is no objection, so state so they know they can comply.

MR. CORRELL: OK. So they then will give us the subpoena first.

THE COURT: That way, Mr. Miller, no harm done.

MR. MILLER: Of course.

THE COURT: Yes, you're a lawyer. There's no problem.

MR. CORRELL: We'll consent to that.

THE COURT: Good. Are there any others?

MR. KRAININ: Yes, your Honor. Dan Krainin for Sunoco. With that proviso, I would suggest that we be allowed to preview it.

THE COURT: Sure. And with your consent you would be done.

And you are?

MS. WEIRICK: Stephanie Weirick for the BP defendants. We have no problem with that approach.

MS. MEYER: Lisa Meyer for Citgo Petroleum Corporation. We have very limited site material because we don't operate stations generally, but we would agree to the same circumstances that were just laid out.

THE COURT: That's fine.

So you get the idea, Mr. Miller, of how to get this accomplished promptly.

MR. MILLER: Yes, your Honor. Thank you for your help.

THE COURT: All right. So that takes care of 3C.

Now, plaintiffs' proposal on section 3A, 9 through 11, defendants object to plaintiffs' request for defendants to produce licensing, branding, and franchise information for every station throughout the state before the plaintiff identifies which sites are at issue.

Mr. Miller, this one sounds like it might have merit. What's the point of doing that for every station in the state of Pennsylvania? Or how about Mr. Axline? What happened? It's a shell game. No pun intended.

Anyway, Mr. Axline.

MR. AXLINE: Yes, your Honor. This entire list is predicated by the term "readily available electronic information," so to the extent they have this in databases...

THE COURT: Well, it's not even so. What's the point? I mean, there must be, I'm guessing 50,000 stations in all of Pennsylvania. It's an enormous number of stations. Without having any reason to believe that a station has any issues, or has ever had an issue at that site, what's the point of gathering all that up?

MR. AXLINE: If it's in readily available electronic information, we know enough --

THE COURT: It won't tell you anything that will help you with the site identification. I do want to help you to get ready, for sure, by the end of December. But knowing that somebody has branded a particular station with their brand doesn't help you know the answer to whether there's been a problem at that site. What you want is remediation data, and we're going to get to that, but I don't see how the licensing branding and franchising moves you along to identifying sites that have been impacted in some way other another.

MR. AXLINE: It doesn't tell us which sites have been impacted. But it does gives us a jump, and we think an easily provided jump.

THE COURT: How does it do that?

MR. AXLINE: Because the vast majority of these

stations are likely to have MTBE problems. And if we know early on and are able to electronically search for which defendants supplied which stations --

THE COURT: So they supplied it. How does that show that there was any leak or report of leak or contamination? Just knowing that BP or Shell or Exxon or somebody supplied it doesn't tell you anything, does it?

Now you both are up. OK, Mr. Miller.

MR. MILLER: Your Honor, if we know it's a Shell-branded station, we will know when Shell had MTBE in the gasoline. And they were among the first two, as an example, that used MTBE starting in 1979. So that information helps us determine the likelihood that MTBE was in the gasoline that was released.

THE COURT: But that's assuming a release. That's the problem. That's working in a circular fashion. Without a release it hardly matters that it was -- whoever you said was first. Who was the example you said?

MR. MILLER: For the period between 1970 --

THE COURT: Which company?

MR. CONDRON: Shell, your Honor.

THE COURT: Yes, Shell. So you know it was Shell. But that doesn't imply anything about whether or not there was ever a release. So Shell used MTBE, I get that, at the Shell station.

MR. MILLER: If it were a different defendant, they would also know for the same year they didn't have MTBE in their gasoline. So that basic information helps us focus on stations that had MTBE gas during the time we received a report that gasoline was released, not MTBE gasoline. That's the nature of the problem. The reports generally do not say whether the gasoline released was MTBE or not, and that piece of information helps.

THE COURT: OK. So you could work it another way. If there are gasoline releases reported in any station, then you can ask for licensing branding and franchise for that station. And if there's a database, they can quickly supply it. It is not a problem.

Mr. Bongiorno?

MR. BONGIORNO: There is another issue, your Honor. And that is --

THE COURT: Oh, there's always another issue. But what's this one?

MR. BONGIORNO: Understood. An issue here, your Honor, is that Pennsylvania had five RFG counties over here and then, don't quote me on the percentage, but a huge percentage of the state that did not opt into the program. So it doesn't solve the problem. And what we're trying to avoid is going down rabbit holes for sites that won't be in the case. When we get a site list, this is fair game.

THE COURT: I appreciate that. But I understood what Mr. Miller just said was about the release of gasoline, not a release of MTBE-containing gasoline. I don't think that's a problem. Because once he collects the reports of gasoline releases of a station, then the knowledge of whose it might be does tell him something about whether that release could have contained MTBE or not depending on which company gets it and when they added it. But he still has to go first. He still has to figure out the site where there are reported releases. Then he can get the information for those sites.

MR. BONGIORNO: Understood, your Honor. It doesn't get him there, though, because it still might not be MTBE --

THE COURT: I know that, but he's got a right to investigate it. Let's say he's got a report of a release in 1982. Maybe at that time only a Shell station was adding it, because they apparently started in '79, if that's what you said. So, you know, I understand. But he still has to go first. He's got to collect all these release reports, and then he can seek the information from those stations.

Mr. Condron.

MR. CONDRON: Just to clarify, your Honor, *some* Shell gasoline started in 1979 with MTBE. I just wanted that to be clear on the record.

THE COURT: So, Mr. Miller, I don't think I would have it be done for every station throughout the state. I think

that's just more work and more information than you're entitled to.

MR. MILLER: I understand we have a list of approximately 16,000 sites since 1988 where gasoline releases were reported that we can supply to the defendants and that, within a reasonable period of time after they receive that information, they should supply us the supplemental information about branding, etc., that we discussed thereafter.

THE COURT: OK. Good.

MR. MILLER: I would suggest that sequence, your Honor.

THE COURT: That's fair. It's still a big number, but at least you'll know whose gasoline according to brand name or franchising or licensing. And then we go from there.

MR. MILLER: Yes.

THE COURT: So big numbers, a big state. But at least you may be reducing some 15 to 16 thousand. I don't know.

Yes, Mr. Bongiorno.

MR. BONGIORNO: Your Honor, if I'm reading his proposed CMO language correctly and he's talking about readily available data, then we hear you. We're on the same page.

THE COURT: Good. All right.

So now we're down to defendants' proposed section 3A, 8 through 12. It requires the plaintiff to produce readily accessible electronic data covering plaintiff's ownership

interest in UST sites, plaintiff's involvement in the supply distribution for MTBE gasoline, and MTBE release or remediation information from plaintiff-owned or -operated sites.

Mr. Miller, what's wrong with that proposal? Or -- I can't get it right today -- Mr. Axline.

MR. AXLINE: My apologies, your Honor. So at least it's easy to distinguish us physically.

THE COURT: Yes. I was going to say the same thing.

MR. AXLINE: This was sort of a late edition by the defendants, to which we objected initially. I think as long as this is "cabined" by the qualifier that Mr. Bongiorno just noted, that it is readily available electronic data, we can provide him with this. In fact, I think it's probably going to be in what we give them on MTBE releases in any event.

THE COURT: On MTBE releases? But I thought you couldn't do that till the end of December.

MR. AXLINE: We're not going to be able to give them a comprehensive list until the end-of-December date, which I would like to discuss more with you. But we have agreed to and we will provide them with readily available electronic data before the end of December, some of it on a rolling basis, but certainly all of it before the end of December. So in that information will be information that is --

THE COURT: Well, if it's readily accessible electronic data covering the topics I already read into the

record, I don't even see why it requires waiting for the fuller list. You should be able to just do it. And there should be a file-earlier date.

MR. AXLINE: Well, this is not segregated information in the ways that the defendants have listed them. The defendants keep track of this information this way, but we don't.

THE COURT: The sites you don't?

MR. AXLINE: The commonwealth doesn't.

THE COURT: The commonwealth doesn't know their own sites, or operated sites?

MR. AXLINE: It does know that, but it's not necessarily all and readily available electronic data. If there's a database that contains all these sites where gasoline may have been released, we'll be happy to provide that. I don't think there is one.

THE COURT: What about just your ownership? Putting aside the word "release." Doesn't the commonwealth know what it owns, operates?

MR. AXLINE: As with stations, your Honor, as you just pointed out with respect to the defendants, they're not going to be relevant unless there's been an MTBE release at the station. So it wouldn't serve any purpose for the commonwealth to provide the database for all the property we own.

The relevance, as the defendants pointed out, is, was

there an MTBE release there.

THE COURT: Well, I guess I understand. But I guess what I don't have any handle on is, are you a large percentage of the total or a small percentage of the total?

MR. AXLINE: Very small, very small.

THE COURT: That's what I thought. It was different from what you asked them. I thought you were going to answer "very small." In that case, you should do all, because then everybody knows which they are. You just said very small, not just small, but very small. So this list might be not 16,000 but less than a thousand. And I don't know what it is.

MR. AXLINE: Well, it might be, but it's -- I don't know either, frankly, your Honor.

THE COURT: Maybe you should look into that. Why don't we ask you by the next conference to determine from your client what size we're talking about, what burden we're talking about, and what's readily accessible. And then we'll be able to talk with more knowledge.

MR. AXLINE: I can do that. I would be happy to.

THE COURT: All right. Next conference we'll go back to this one. All right.

And when we do that, then I can set a date for production. Now, you wanted to quarrel with end of the year?

MR. AXLINE: I don't want to quarrel, your Honor, but I do want to request this. What we had proposed to the

defendants in a meet-and-confer just before coming in here was that once the initial round of discovery has been completed and everybody has the readily available electronic information, we then give ourselves 30 days to look at that, make some realistic determination of what it is going to take to extract the list that the defendants want from that, and then come back to you and say, here's the amount of time we think we need to produce that list, at which point you could say, that's not reasonable, or, given what you just told me about the logistics, that seems reasonable, or an alternative date. But I think December 15th, that's a lot, a lot of work, to do -- given the fact that we haven't really even received anything from the defendants yet, we don't know what the scope of what they're going to provide is. We do have a sense of what we have, and it's enormous. So I would request that rather than setting a hard date now, you order the parties to, within 30 days of whatever the cutoff date for an initial discovery period is, that you order the parties to, within 30 days of that date, come back to you with a proposal for a time frame for a final order.

THE COURT: I'm happier with setting December 15th as the date and then you have the burden to explain why I should extend it. But I really think we need a goal that is in place and should be met. It's two thirds of a year. We start with April 15th. That's a lot of months. It should be eight.

That's a lot of months. So it's a matter of where you put your resources. Your firm is clearly very busy with a lot of places and a lot of cases -- OTWB, Puerto Rico, New Jersey. You're very extended. But that's not a reason not to move this case forward. So I'm going to leave December 15th as the date, with you having the burden to explain why I should extend it.

MR. AXLINE: As long as we have the option of coming back and pleading our case, your Honor.

THE COURT: You always do. Whether you have the option or not, you do come back and plead.

MR. AXLINE: I think one of my colleagues is about to say that you had initially suggested December 31st.

THE COURT: True. He listened hard. OK, done.

Now we're up to this troublesome issue about Lukoil, Getty and all the rest of it, and where we're up to.

Mr. Bongiorno.

MR. BONGIORNO: Your Honor, I apologize. Before we move on, my co-counsel and friend Mr. Stack just remanded me of one thing. It's not a change of position. On the subpoena issue -- and we still agree -- we just have to reserve work product and attorney-client issues.

THE COURT: I think Mr. Miller knows that, and there could be disputes down the road. We'll worry about them.

MR. BONGIORNO: Thank you, your Honor.

THE COURT: That's fine for the record.

Now, this issue about personal jurisdiction discovery, I think I need you to explain, "you" being the plaintiff, what additional discovery you need, in view of the fact that in your reply letter from the defendants they say they're going to produce much of what you seem to be asking for. So I'm not sure what's left. The LAC claims that it produced the entire 2009 GPM ILMA purchase and sale agreement. And it says it will produce the missing attachments, and it will produce the 2004 agreement when it obtains the consent of the parties to allow it to be produced, which overrides the confidentiality agreement. So when that show is up, what does that leave?

MR. AXLINE: Several things, your Honor. First and foremost, we would like to know who was paying the salaries, that is, which bank, which bank account was paying the salaries of Mr. Guzman and Mr. de Laurentis during this time period.

THE COURT: Which time period?

MR. AXLINE: The entire time period from 2001 through to the end of the transaction with L&A.

THE COURT: Which is?

MR. AXLINE: 2009, the end of -- through the end of 2009. And frankly we don't want just the employment agreements. We would like to know where the money was coming from, whose account the money was coming from to pay those gentlemen's salary, who were so instrumental in this entire series of transactions.

THE COURT: Who is the lawyer who is going to respond to this?

MR. AXLINE: That's one. I have others.

THE COURT: I know. I just want to know who I'm looking at. Who are you again?

MR. TUITE: James Tuite, your Honor, representing Lukoil Americas Corporation. I believe yesterday we did produce bank account information for a couple of years at least, 2005, 2006. I don't think we produced all the bank account information for Lukoil Americas Corp. or GPMI for this entire 2001 to '9 period.

THE COURT: But he said which account was paying the salaries for these two individuals from 2001 to 2009.

MR. TUITE: We did produce the employment agreement for Mr. Guzman, and that employment agreement was between him and GPMI. And my understanding is that, from the client, is that they received compensation, both Mr. de Laurentis's and Mr. Guzman, only from getting Getty Petroleum Marketing, and were not paid anything by Lukoil Americas Corporation. But we can, you know, I'm not sure we can produce every single, and whether that's necessary, to produce every single bank account, or monthly bank account.

THE COURT: He asks you to identify the bank account from which the money came that generated the salaries of these individuals for an eight-year period. He didn't say he wanted

every monthly bank account statement.

MR. TUITE: Well, we can do that, your Honor.

THE COURT: OK. That's one of them, OK. We're ready for the next one. Because number one you just won.

MR. TUITE: But let me just clarify one thing. While we can provide information about which bank account, which company's bank account paid these, the salaries that he's identified, to the extent we're required to produce or even let them see GPMI's individual bank statements or whatever, we don't have the GPMI material, because he sold the company in February 2011. That's all, your Honor.

THE COURT: Well, who has control of it? Do you know who has control of it?

MR. TUITE: The company was sold to an unrelated third party named Cambridge Petroleum. But Getty Petroleum Marketing, in December 2011, went into bankruptcy. There is a trustee. I assume that the trustee has control over whatever records there are of GPMI.

THE COURT: That was one of my questions, was about bankruptcy court jurisdiction.

But anyway, you understood his qualifier. He can't produce what he doesn't have possession, custody, and control over. That which he does have possession, custody, or control over, he agrees to produce, on this one topic, the bank account. But he's telling you that certain such accounts he

doesn't have -- so long to say those three words -- PCC over. So you have to figure out who does. And he has tried to help you figure out who that might be.

MR. AXLINE: Those were originally, I guess -- GPMI's records were originally GPMI records.

THE COURT: Of course.

MR. AXLINE: However, a lot of that was provided in the dispute, in the creditors' representative's dispute in the bankruptcy proceeding, to LAC, to the other parties. I assume LAC had access to those. If he is now representing he either didn't see them or didn't retain copies of them, that's one thing. But what he's saying is, well, those aren't really our records.

THE COURT: No. I think he's saying he doesn't have them, he doesn't have PCC over them.

MR. TUITE: Your Honor, to the extent we do have them, either because we have duplicates that stay with the company or we got them in this other proceeding, we've been able to produce them. But some things we don't have.

THE COURT: Right. So you just need to talk with each other. And if he doesn't have it, at least then if he can help you figure out who does he will, and otherwise you'll have to figure it out.

That's one.

MR. AXLINE: Just also to clarify, your Honor, I do

want to say that you're correct. We're not asking for all bank records. What I'd really like to see is a Xeroxed copy of the employment checks that were sent to Mr. Guzman and Mr. de Laurentis.

THE COURT: The actual check showing which account it came from?

MR. AXLINE: Where it came from, exactly.

THE COURT: Yes.

MR. AXLINE: The next thing, your Honor, is depositions. These two individuals were deposed extensively in several proceedings, including the proceeding alleging fraud in the transfer of the GPMI assets.

THE COURT: You want those transcripts?

MR. AXLINE: Well, we wanted to depose Mr. Guzman and Mr. de Laurentis. But as a way to make it more efficient we said, please give us their prior depositions, we'll let you know if there is anything else we need.

THE COURT: OK. And?

MR. TUITE: We have produced those transcripts.

Excuse me, your Honor. Just to be clear, we produced the Guzman and de Laurentis transcripts in the other proceedings. We produced their trial testimony. And we also produced their testimony in an arbitration that he asked for.

MR. AXLINE: And they're highly redacted versions, so, yes, they produced them, but they didn't really produce the

stuff that we're the most interested in. We've offered time and again to enter into a confidentiality agreement.

THE COURT: Why are they highly redacted?

MR. TUITE: The only thing that is redacted is privileged material, for my client.

THE COURT: In other words, that might require *in camera* review, because he says that they're so highly redacted that they're useless. I don't think you can be the only arbiter of what is privileged. So if need be, I'm going to have to ask for them to be submitted, redacted and unredacted, so that I or someone I appoint can review them.

MR. TUITE: Let me just give a little context for why there are redactions in the depositions. In the bankruptcy proceeding, when the GPMI trustee brought the fraudulent conveyance action in 2013, the trial in 2013, relating to the conveyance that occurred at the end of 2009, the trustee not only named various corporate entities; it also named the directors and officers of Getty Petroleum Marketing. And one of their defenses was advice of counsel. And there was a determination made in the case that between the trustee, GPMI, and the defendants in the case there was a shared privilege. And so basically the trustee could see anything and everything, even the attorney-client material. However, third parties could not. And that's why the judge sealed parts of the trial testimony.

But we can submit this information for you to take a look at. But much of the -- what's redacted is discussions of attorney-client material.

Now, there's a lot of material not redacted.

THE COURT: I have a feeling that Mr. Axline has -- and he claims it's so heavily redacted it's pretty well useless. Now, you're talking about trial testimony. There were depositions, maybe no judge there says it has to be sealed. I just don't know how many different transcripts we're talking about. But the bottom line is, they should be produced to the fullest extent possible, and that which is withheld should probably be submitted for *in camera* review, redacted and unredacted, and I'll have to look at it.

That's the best I can do for you, Mr. Axline.

MR. AXLINE: Thank you, your Honor. I appreciate it.

THE COURT: Yes. I think all I can say is, you must produce depositions of all these people.

MR. TUITE: Let me ask one other thing, your Honor, which is that the redacted information relates to this 2009 transaction, which, under Maryland law, is not relevant to the veil piercing issue that is presented by our motion to dismiss based upon personal jurisdiction. And as a matter of fact, not only is it not relevant under Maryland law; there is nothing in their complaint, not one word, about this alleged fraudulent conveyance in 2009. So until there is something in their

complaint about it --

THE COURT: Well, but I think it's the commonwealth's argument that he needs even the 2009 agreement to understand how environmental liabilities were initially distributed and where the distribution of liability changed with that transaction. They have a right to follow the transaction.

MR. TUITE: There is no testimony in these depositions or the redacted material about environmental liability.

THE COURT: That may be so, but it's the first time I know that.

MR. TUITE: But we did give them the 2009 purchase and sale agreement that addresses which companies -- addresses who bought what stations and who is responsible for the environmental liability for those stations. So we've given them that information.

There's another sale where they're interested in the same questions. That's the one in 2004. And we're in the process of getting that agreement, going through the consent procedure, and we'll get that to them as well.

So to the extent they're looking for information about who owns the stations and who has the environmental liability, we're giving them that information. To the extent they want a lot of information about this alleged fraudulent conveyance in 2009, that has nothing to do, under Maryland law, with being able to pierce the veil.

THE COURT: All I know is it says Maryland law applies. Whether this has anything to do with -- under Maryland law, I can't know that.

Mr. Axline, how does the transaction years later affect your theory of the environmental liabilities and the transfer of the fraudulent conveyance? How does that all play out?

MR. AXLINE: One of the veil-piercing inquiries under Maryland law, your Honor, under Maryland law, is, "The courts may consider a corporation as unencumbered by the fiction of corporate entity and deal with substance rather than form as though the corporation did not exist in order to prevent evasion of legal obligations." What happened in 2 thousand -- and by the way, the case that they cite from Maryland law, that *Colandrea* case, C-o-l-a-n-d-r-e-a, was a divorce case. The wife had a couple of corporations that she owned separately. There was an agreement in year X, let's say, that she would pay the husband out of corporation number one. A couple of years later she transferred all the assets out of corporation number one and then, among other things, sought to pierce the veil, and the court said, yes, you can do it under those circumstances because what she's trying to do by moving those assets is to not be able to pay you. And that's exactly what happened in 2009, when this whole thing that was orchestrated by LAC happened. They took a company with assets. They sold

it to one of their other subsidiaries.

THE COURT: The took the assets so the company couldn't pay. I get it.

MR. AXLINE: Sent it back. Lo and behold a year later that company is out of money, we're out of luck. So that's what we're interested in exploring.

MR. TUITE: Your Honor, that's nothing about that in the complaint.

THE COURT: Well, I don't know that that's dispositive, because at that point in time, they didn't know what events and what law would apply. I don't know that they had to plead with that level of specificity. We're up to now. You want them to amend. That's fine. But they're telling you the theory of why the 2009 transaction is important. And I must say it sounds important to me to. They have a right to follow the money or the lack of it. So I would say you do have to do it. You've already begun to do it anyhow. You've produced these depositions or trial transcript but in redacted form. We've already covered that. I will look at it.

Now, I do want it go over, you say you had more topics besides the depositions, besides the bank accounts. What's next? Or have we covered it?

MR. AXLINE: May I consult, your Honor?

THE COURT: Yes.

MR. AXLINE: I guess, as my colleague is pointing out,

we would like to reserve the right to take a deposition if necessary after you've had a chance to review the transcripts in camera and we've had a chance to assess what Lukoil has just now produced in the last several days.

THE COURT: OK. We can always take it up at any time you request a conference after you've looked at what you have gotten, and if you request a deposition then and they oppose it, I'll hear about it and rule. I don't want to do it in advance. And you don't either. You want to review what you have.

MR. AXLINE: And that completes our wish list, your Honor.

THE COURT: OK. But the defendants have raised some issues on this with respect to the jurisdictional discovery. One, it says the Court would have to rule on whether the bankruptcy court has exclusive jurisdiction over the commonwealth fraudulent conveyance claim? I'm not quite sure what you mean by that.

MR. TUITE: The theory of the complaint in this case has to do with harm caused by the use of MTBE gasoline.

THE COURT: Right.

MR. TUITE: But the harm they're complaining about now is harm that flows, allegedly, from this transaction that occurred in 2009, saying that --

THE COURT: Well, not really. That's why the Court

has jurisdiction over the defendants. It's a predicate argument. Obviously the claim is for MTBE contamination. They're not displacing the bankruptcy court and trying to recover on a fraudulent conveyance claim. What they're saying is, if you follow the money or the lack of it, you will eventually decide there's personal jurisdiction. That's all they're talking about.

MR. TUITE: Well then, I think, your Honor, we ought to have some briefing whether, under Maryland law, this transaction is relevant to the veil piercing that they're trying to do.

THE COURT: And he just said orally and in summary fashion why he thinks so, and I'm sure in the briefing you're saying more and he's saying more.

MR. TUITE: The cases under Maryland law talk about how the domination or control in order to pierce the veil has to relate to the transaction at issue and the control has to be used such that the transaction at issue in this case has got to be the one that's alleged in the complaint, and that the harm complained of has to be the result of the use of the domination and control in order to pierce the veil. And everything that he has identified in terms of the alleged harm, you know, GPMI being able to respond to its MTBE liability because he's allegedly been stripped of his assets, none of that is in the complaint.

MR. AXLINE: Your Honor, the defendant we're talking about here is Lukoil Americas Corporation, not GPMI. And Lukoil Americas Corporation has not declared bankruptcy and is not in bankruptcy court.

MR. TUITE: Your Honor, we've already talked about the fact that Lukoil Americas Corporation is a holding company, has no operation, owns nothing in Pennsylvania. The way they're trying to bring Lukoil Americas Corporation into this case is by piercing the veil of GPMI. So that's what you have to look at. Was GPMI so dominated and controlled with respect to the use of MTBE that Lukoil could be held responsible for that. And this information he's seeking has nothing to do, this 2009 transaction, has nothing to do with that question.

Now, if they want to allege, amend their complaint and allege that, well, wait a second, Pennsylvania was harmed by the 2009 transaction, that's exactly what was litigated in the bankruptcy court, where the GPMI trustee on behalf of creditors or potential creditors attacked and challenged that 2009 transaction. Pennsylvania had notice of that proceeding, declined to participate. But --

THE COURT: What was the outcome of that proceeding?

MR. TUITE: Pardon, your Honor?

THE COURT: The outcome of that proceeding.

MR. TUITE: It ended up there was a trial that lasted 17 days, and ultimately there was a settlement.

THE COURT: A settlement.

MR. TUITE: Yes.

So I guess my position on this is that they have not shown, under Maryland law, that this 2009 transaction is relevant.

THE COURT: I don't think they can show it just yet. That's the point of the discovery. At the end of the discovery there would be briefing to see if the Court should exercise personal jurisdiction. And the only way is by veil piercing under Maryland law. I don't think we're ready for that briefing until they complete the discovery they feel is necessary to lay the groundwork for the briefing. And I just allowed some of that discovery. But so have you. I mean, you've agreed to look for those checks of employment. You've agreed to produce the deposition transcript. And he said at this point that completes his wish list. So I think the briefing suggestion is premature.

MR. TUITE: Your Honor, one reason that we have tried to be cooperative is to give them enough to see that the 2009 transaction and the trial in 2013 had nothing to do with environmental liability.

THE COURT: And Mr. Axline's response is, I don't have enough just yet to make that conclusion, but we're producing, it's coming. Let him finish and we'll see if there's a briefing on personal jurisdiction. But I thought I resolved

this in two outstanding discovery disputes, which would take us to Puerto Rico, which is anyway today better than even the others.

So let's talk about Puerto Rico. So the Puerto Rico Supreme Court, in a relatively close decision, won't take up the issue. They denied reconsideration of their earlier decision five, three. So that's over. And so we have more summary judgment motions coming on this, I should call it time-bar issue. And you talked about an omnibus brief and plaintiff proposed a schedule, and that schedule is a little unrealistic because it proposed a moving brief six or seven days from now. That doesn't make sense to me. But the defendants proposed pretty much a reasonable schedule: They move by May 15, a response by June 15, reply by June 29. That sounds pretty good. But what I can't figure out is, this is for an omnibus brief. They asked for an extension. Does that mean that if I were to adopt that schedule and that page limit, there are no individual motions? It's all going to be in the one omnibus motion?

MR. PARDO: Your Honor, Jim Pardo for the defendants. Good afternoon. The short answer is, no, I am aware of at least, I think, one motion by the defendants that would not be part of the "omnibus" brief.

THE COURT: What motion is that?

MR. PARDO: I believe that's the motion by Petrobras.

THE COURT: Well, but that is a different story too. Petrobras, I thought you were going to try to do it by stipulation. Why are we -- that's a do-over.

MR. GILMOUR: Your Honor, John Gilmour on behalf of the commonwealth. We are working with Petrobras on the joint stipulation. They provided it to us. That conversation started again last week. I believe we had it in our office, sent it back this morning. We are working on that. We anticipate that we will reach a stipulation.

To advise your Honor, we also were contacted yesterday by one other corporate entity that may fall into that same category, and we've begun those same discussions with that entity. And those are the only two that I'm aware of that may not fall within this omnibus briefing. But if there are any others that fall within that, we are willing to talk to them about stipulation.

THE COURT: Mr. Condron?

MR. CONDRON: We are the other entity, and in fact we're going to see if we can work out something with the plaintiffs.

THE COURT: I want to hear about it in advance, because if you can't, I'm not sure I can allow this other briefing. There are only so many briefs per year I want in the MTBE cases. So by doing an omnibus, that's the point, to get it all done in one big briefing.

So before you can make a motion, I want a conference. If you can't do it by stipulation I want to find out why.

MR. CONDRON: Understood. That's the same issue that Petrobras had.

THE COURT: I understand. That should be worked out, seems to me. Preserve your appellate rights and agree to be bound by the ruling. Pretty straightforward stipulation.

Let's say we're going to one omnibus motion and there won't be any separate ones. If that's the case -- and who is responding? Mr. Gilmour? OK. If that's the case, what's wrong with the proposed schedule, May 15, June 15, June 29? And all these extensions on page limits, 120 pages of briefing.

MR. GILMOUR: Your Honor, we met and conferred prior to the CMC, your Honor, and we agreed to that schedule if that's acceptable to your Honor.

THE COURT: OK. It is acceptable to me. So it's three briefs, 120 pages, certainly sounds enormous, but OK, on those dates. If you can do it in less pages, you get brownie points for every page less than 50.

Then that takes us to the Rule 12 motion, which is apparently a separate motion, in Puerto Rico too?

MR. GILMOUR: Yes, your Honor. Before we move on, may I raise one issue that we were talking about? We had been talking about issues related to page numbers for exhibits, a number of exhibits. And we are continuing to have that

dialogue. I just wanted to advise your Honor of that and let you know that we may approach you afterwards regarding whatever agreement we reach.

THE COURT: Yes. I don't necessarily commit to rubber-stamping your agreement.

MR. GILMOUR: Understood.

THE COURT: But I would sure like to know about it.

MR. GILMOUR: I just wanted to make sure you were aware that that one issue remains and we are continuing to work on it.

THE COURT: Right. And I want to make sure you understand I may not go along.

MR. GILMOUR: Yes, your Honor.

THE COURT: OK. You're last.

MR. SCHULTE: David Schulte on behalf of Petrobras. Just one note on PR I before we move on to PR II, which is, we share the Court's optimism that we'll have this stipulation in effect by May 8. But if for some reason it's not, we would request permission to file our summary judgment motion by --

THE COURT: Denied. I just said, if you want to make a motion, come into court, let's talk it over and find out where was the problem on stipulation, because this should be straightforward. I don't need or want another motion. The outcome is predetermined. You need to craft a stipulation language. So, no, you can't make a motion till I hear you, in

court.

MR. SCHULTE: OK. Thank you, your Honor.

THE COURT: Now, yes, Mr. Pardo?

MR. PARDO: One other point, your Honor, concerning our motion, because I want to be clear with plaintiffs about what we intend to do and make sure there's not a misunderstanding about "omnibus." The defendants' intent is to move for summary judgment as to the trial sites, which show, I believe there are five left now. We believe that your Honor's ruling as to those sites will have implications, and may have implications for the other sites in the case. But we don't intend to ask for summary judgment on those other sites.

So "omnibus" means all the sites that are trial sites and all the defendants that will be moving. But it does not mean all the sites that are still in the case right now.

THE COURT: Well, plaintiffs may actually like that idea. Do you have any objection to that idea?

MR. GILMOUR: No, your Honor.

THE COURT: Right. It seems to be beneficial to everybody. That's understood.

Now, Puerto Rico II. What is the Rule 12 motion there? There is a different schedule than was proposed. I want to understand if it's a motion to dismiss as opposed to summary judgment.

MR. PARDO: I'm sorry, your Honor?

THE COURT: What is this Rule 12 motion in Puerto Rico II and why does it have a different schedule? Why are there different motions with just different defendants? What is it?

MR. PARDO: Well, it's a different case.

THE COURT: Well, you say that, but I don't understand.

MR. PARDO: There's been no motions to dismiss yet.

THE COURT: Right. But I don't understand what makes it different. Is it overlapping defendants but different sites?

MR. PARDO: Yes.

THE COURT: Yes.

MR. PARDO: Yes. The short answer to that is yes. It's overlapping defendants. I think there are some different defendants, and different sites.

THE COURT: Does it change the prescription issue?

MR. PARDO: I don't -- well --

THE COURT: I mean, if it doesn't, why isn't it covered by the first motion? Then you can say, whatever you rule there applies in Puerto Rico II to the extent it's the same defendants. Because it sounds like the same issue. Assuming it's different sites it's the same issue.

MR. PARDO: There's been no discovery, of course.

THE COURT: Well, then talk to each other before you make -- let's put off, then, the Rule 12 scheduling for one

more meet-and-confer, and then we don't have to wait for the next conference. We'll have a phone conference. It may be that again there is a stipulation that would say, to the extent the legal issues are the same we'll all agree it will apply in Puerto Rico II, which then is different because there are different defendants with different dates of when things were null and they're not null. That's a new motion. But if it's the same defendants, if we're talking about Exxon and Shell all over again and whoever, I don't see why we do it twice. Could we reconvene after you meet and confer?

MR. PARDO: There are a couple other, I'll call it arguments or angles of attack that some other defendants, including my client, may want to make beyond just the prescription issue.

THE COURT: A classic Rule 12 motion that is on a different issue.

MR. PARDO: Correct.

THE COURT: OK. Well, to the extent the issues are different, then I don't have an overlapping problem, and you proposed May 22, June 5, June 19. That's fine. No extension of page limits. Classic motion. Just, it can be made. But what I'm more interested in is the overlap. If there is overlap, I'd like you to talk to each other and reach an agreement. I don't need a second motion that says the same thing but that the ruling would apply.

MR. PARDO: Understood. May I -- we've conferred on the schedule as well and had a slightly different schedule than what was in the letters that we would like to propose to your Honor.

THE COURT: I bet it's later.

MR. PARDO: It is, your Honor.

THE COURT: What is it?

MR. PARDO: Opening briefs on June 15th, response briefs July 15th, and reply --

THE COURT: Much later.

MR. PARDO: I'm sorry. July 13th. Yes. And reply briefs on July, I had 27th.

MR. GILMOUR: That's correct.

THE COURT: That's a six-week change. Why so much?

MR. PARDO: I think because we wanted to avoid the overlapping briefs with Puerto Rico I.

THE COURT: You just did. But they're not going to overlap. We already talked about that. Could be different issues raised.

I thought it could be tight. You said the moving briefs were to be June 15. Before, the proposal was only a two-week gap, not a month, for the response, and then two weeks to reply, not a month. So it makes it so long, the length of time between briefs. You know I like to get this work done. So if the moving brief is June 15, why couldn't you have the

response by July 3, which is three weeks, not two, and then the reply by July 17? That's a little better.

MR. GILMOUR: Your Honor, if I may, part of the problem with the short window is we don't know how many motions are going to be filed and on what basis.

THE COURT: No, that's the problem too. I want to know that too. I don't want to get flooded with seven different motions. Were you not thinking of consolidating legal issues? If you attack a complaint on legal grounds, it's the same for everybody. It's not a summary judgment. We're not going to start dealing with facts and attachments and exhibits. This is Rule 12. This is a Rule 12 motion. It's across the board. It's not fact-specific. I didn't expect to be hit with seven, eight, or nine, or five different motions. I thought they were talking about one, again, consolidated motion to dismiss on purely legal grounds on the face of the complaint. And this is putting prescription aside. I think that's going to be an overlap.

Go ahead, Mr. Pardo.

MR. PARDO: Thank you, your Honor. Sorry to interrupt you. We will, we might need some relief from the page limit if we were to consolidate it. But I guess we were thinking it may -- we're still talking about which motions there would be. And I don't think there's eight or nine. There may be three or four. But they're so different that I don't know that it would

make sense to put them together.

THE COURT: Different by defendant or different by issue? Because in every case there is a Rule 12 motion. Lawyers raise three issues, and I don't give them three motions to do it. They fit it in. Then we have other conference cases in this building, every day, most of them are financial, but so be it, and you get it done. No matter how many issues they raise under Rule 12 they get it done in one motion. They don't get one motion per issue.

MR. PARDO: It is different defendants for certain issues. So you would have a brief with three or four discrete issues. There might be some defendants who are going to challenge their being named here on the basis that they were late named.

THE COURT: OK. That's prescription. We talked about that. I thought we were going to put that aside for this conversation.

MR. PARDO: But there are one or two defendants that may have jurisdictional challenges. There are one or two defendants that may even have a statute of limitations, a site-specific statute of limitations argument that they want to make, as a matter of law.

We could put that all together. I just --

THE COURT: Well, why don't we wait on the schedule, then, but not long. Why don't we say that we would have a

conference in the next ten days, either by phone or in person, to discuss Puerto Rico II motion practice and give that a little more time to consider what was said here and how to organize it.

MR. PARDO: I think that would be helpful.

THE COURT: All right. So today being April 24, we need to have a conference no later than May 8. You pick the date. You pick the time. I'm pretty free. Nobody wants to go to trial, so I'm pretty free. There aren't many trials going anymore, but OK. So what day would you like? It doesn't matter to me. May 7, May 6, you want in person, you want by phone?

MR. GILMOUR: What day is May 7?

MR. PARDO: It is a Thursday. May 7 is a Thursday.

THE COURT: What day is it?

MR. PARDO: Thursday.

THE COURT: In person or by phone?

MR. PARDO: I think we could do this by phone, your Honor. I prefer in person myself, but for other defendants who, for this, may just prefer to stay by phone.

THE COURT: May 7 did you say?

MR. PARDO: Yes, your Honor.

THE COURT: You did. That's fine. So we could do it at 3:30 on the phone.

MR. PARDO: All right. I don't have my calendar in

front of me, but I'll make it work.

THE COURT: OK?

MR. GILMOUR: Yes, your Honor.

THE COURT: Then I'll put that down. And that's solely for organizing this Rule 12 motion practice.

MR. PARDO: Thank you, your Honor.

THE COURT: Then let me see what's left on the agenda.

Unjust enrichment, that's the only thing left. Defendants have attached proposed orders. There is no objection. So I'll sign that order.

MR. GILMOUR: Thanks, your Honor.

MR. PARDO: Thank you.

THE COURT: And I think that concludes the agenda.

MR. PARDO: It does.

THE COURT: Does anybody have anything else they want to discuss?

MR. PARDO: Do we want --

THE COURT: A new date?

MR. PARDO: Next date?

THE COURT: What do you suggest?

MR. PARDO: Second week in June, maybe.

I threw that out there, I'm sorry.

MR. AXLINE: Mr. Miller will be out of the country the second week. Is it possible to make it the third week, your Honor?

MR. PARDO: Or the third week. I thought I had concessions on my side, but sorry.

THE COURT: Is the third week the one that starts with the 15th?

A VOICE: Yes, your Honor.

THE COURT: Again, they're pretty much all the same to me, but that week allegedly has a trial, but I don't believe it until I see it, but allegedly has one. But I would have to say 4:30, until the case pleads, as it inevitably will. Then I can change the time. But I don't care which day at 4:30 that week.

MR. GILMOUR: Your Honor, John Gilmore. I would request if we could push it just back a day or two in that week, simply because the 15th is the day that our responses are due.

THE COURT: When do you want me to push it back? Which date do you want?

MR. GILMOUR: I'm sorry. I understood you to say that it was June 15th.

THE COURT: The week of June 15th.

MR. GILMOUR: The week of. As long as it's not the 15th.

THE COURT: No, I said, pick your date you like that week.

MR. PARDO: 18th, Thursday?

THE COURT: 18th, Thursday, 1:30, unless the trial

folds, and then I'll let everybody know through my clerk and we can make it early.

MR. PARDO: Thank you, your Honor.

THE COURT: All right. Now it sounds like we're all done for today. So, good to see everybody, and we're done.

MR. CONDRON: Thank you, your Honor.

MR. GILMOUR: Thank you, your Honor.

MR. PARDO: Thank you, your Honor.

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